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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

TOM CONWAY,

Plaintiff and Appellant,

v.

GLORIA MORGAN, as Executor, etc.,

Defendant and Respondent.

E061700

(Super.Ct.No. CIVMS1200466)

OPINION

APPEAL from the Superior Court of San Bernardino County. Donna G. Garza, Judge. Affirmed.

Tom Conway, in pro. per., for Plaintiff and Appellant.

Law Offices of Larry David Myers and Larry David Myers for Defendant and Respondent.

Plaintiff and appellant Tom Conway claimed that he purchased the Singing Trees Mobile Home Park (STMHP) from respondent and defendant Elvira Ella Garza as the surviving Trustee of the Garza Family Trust; owner of Garza Investments LP; and as

President and General Partner of the Oflodor Corporation (Garza).<sup>1</sup> Conway filed an original complaint (Complaint) in propria persona against Garza and Garza's companies alleging she breached the purchase and sale agreement that they entered into for the STMHP. He also named numerous other defendants who were renting mobile homes in STMHP but were refusing to pay rent. Garza's demurrer to the Complaint was granted because Conway had failed to show standing, i.e., that he owned or had any interest in STMHP. Conway filed a first amended complaint (FAC) and Garza died after it was filed. Garza's trust continued the lawsuit. The FAC was denied on the same grounds, that Conway lacked standing.

Conway hired counsel, who filed a second amended complaint (SAC) changing the causes of action and eliminating some of the defendants. Conway once again failed to provide any documentation that he owned STMHP. The demurrer was granted and the SAC was dismissed without leave to amend.

Conway appeals the dismissal of the SAC. He claims on appeal that the trial court erred in dismissing the SAC by failing to consider the SAC, the FAC, Complaint and the exhibits all together before granting the demurrer. These documents clearly showed he had standing to file the lawsuit against Garza. Further, the trial court erred by granting Garza's ex parte request for an extension to file a demurrer to the FAC.

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<sup>1</sup> On December 24, 2012, Elvira Garza passed away; Gloria Morgan was ultimately confirmed as the executor of the Garza estate. For clarity and ease of reference, with no disrespect intended, we refer to Elvira Garza in the body of this opinion.

We uphold the trial court's order. Conway failed to show he had any interest in STMHP. His lack of standing warranted dismissal of the SAC without leave to amend.

### **FACTUAL AND PROCEDURAL HISTORY**

“When considering an appeal from a judgment entered after the trial court sustained a demurrer without leave to amend, we ‘accept as true all well-pleaded facts in the complaint and give a reasonable construction to the complaint as a whole.’

[Citations.] In addition, we may consider matters that are properly the subject of judicial notice, and were considered by the trial court.” (*La Serena Properties v. Weisbach* (2010) 186 Cal.App.4th 893, 897.) Based on the claims raised by Conway on appeal, we will review all of the proceedings pertaining to the Complaint, FAC and SAC.

#### **A. ORIGINAL COMPLAINT**

Conway filed the Complaint on August 20, 2012. He filed against several defendants, including Garza and her companies. He also named several renters of the mobile homes in STMHP. STMHP was located at 74685 Amboy Road in Twenty Nine Palms. He alleged that in April 2006, Garza sold STMHP to the STMHP Trust, which held title to the property. Conway alleged that his “Roth IRA” was used for the down payment of \$160,000, which included \$60,000 for 10 vacant mobile homes on the property. Conway alleged that at the close of escrow, his interest “was that of a lender and is secured by an unrecorded all-inclusive-deed-of-trust (AITD) and an option to purchase a 50% interest in the Trust titled and held FBO Tom CONWAY, ROTH IRA.”

Conway alleged the STMHP Trust was owned and operated by his son, Drew Conway, and his daughter-in-law, Heather Conway.<sup>2</sup>

Conway alleged that Garza did not, in fact, own one of the mobile homes sold to the STMHP Trust. He was involved in a lawsuit with the occupants regarding that space and the mobile home on it.<sup>3</sup> Conway also alleged that his real estate partner, Chris Carlson, was the Trustee for the STMHP Trust at the time of the sale from Garza. Conway became the general manager of STMHP when Drew and Heather left to pursue other employment. In 2010, Conway asked Garza for a \$40,000 loan but she denied the request.

The first cause of action in the Complaint was for fraud and deceit. He referred to the sale of STMHP from Garza to the STMHP Trust, of which Carlson was the Trustee. The sale was for \$487,500. Conway made the down payment of \$160,000 and Garza agreed to carry a note in the amount of \$322,500 (Note). Conway insisted during his negotiations with Garza, she agreed to include a “substitution of collateral clause” in the purchase and sale agreement, and to transfer free and clear 10 vacant mobile homes on the property. He alleged, “GARZA agreed that [Conway] could request that the Deed of Trust be assigned to a property of Trustor’s choice and GARZA would approve and execute all necessary documents to facilitate the transfer.” Conway insisted that Garza

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<sup>2</sup> Individuals involved in this matter share the same last name. Therefore, we will use first names for the sake of clarity. No disrespect is intended.

<sup>3</sup> Conway provided numerous facts regarding dealings with tenants in the mobile homes on the property that are not relevant to the appeal.

knew the substitution clause was not enforceable and that she did not own title to all of the mobile homes at the time she executed the purchase and sale agreement.

The second, third, fourth, fifth, and sixth causes of action all involved the renters at STMHP.

The seventh cause of action was for breach of contract against Garza. Conway alleged that he entered into a written and partially verbal contract concerning the sale of STMHP. Conway had performed on the contract—he made payment on the Note—except for paying taxes. In August 2011, Conway requested that Garza perform her obligation under the contract to accept substituted collateral for the deed of trust—he wanted to substitute another mobile home park in Rosamond—and she refused.

The eighth cause of action was for rescission against Garza. Conway alleged the STMHP Trust made 66 payments of \$1,881.25 to Garza on the Note. Conway sought to substitute collateral to the Rosamond property. Garza rejected the substitution of collateral. Further, several of the mobile homes transferred had liens on them; they were not transferred free and clear. On November 20, 2011, Conway sent a notice of rescission to Garza. Conway wanted his down payment back, the amount paid on the loan, and \$200,000 of capital improvements he made at STMHP.

Numerous exhibits were attached to the Complaint. Many involved the ownership of the mobile homes and rental agreements on the mobile homes. Pertinent here, Exhibit O was a purported copy of the amended escrow instructions for the sale of STMHP dated March 10, 2006. The instructions provided that the sale of the mobile homes was a separate transaction. There was a signature line for Garza as President of Oflodor

Corporation, but it was not signed. It was signed by Carlson as Trustee for the STMHP Trust. Conway's name does not appear on the document. A buyer's estimated closing costs document was also attached as Exhibit O. It listed the buyer as the STMHP Trust; Trustee as Carlson. It had a stamp on it stating "Approved" and a signature that appears to belong to Tom Conway.

Exhibit P was the Note. The STMHP Trust signed the note, through Trustee Carlson, promising to pay Garza in installments for the total amount of \$322,500. It did include a clause that, "[p]rovided no default exists under the terms of the Deed of Trust or the Note secured hereby, Trustor can request that the Deed of Trust be assigned to a property of Trustor's choice." Conway's name did not appear on the Note. Exhibit Q was a notice of rescission dated November 30, 2011, which was signed by Conway as Trustee of the STMHP Trust seeking to rescind the purchase agreement.

B. GARZA'S MOTION TO STRIKE AND DEMURRER TO THE COMPLAINT

On September 27, 2012, Garza filed a motion to strike the Complaint. Garza sought to strike causes of action three, four, five and six as uncertain and improper, and all claims for punitive damages, attorney's fees, and noneconomic and speculative damages. Garza complained that Conway was not part of the purchase agreement, which had been completed six years prior. Garza alleged that the STMHP Trust was in default on the Note and had failed to pay taxes. STMHP was subject to foreclosure. Conway was not the buyer or owner of STMHP. Conway was retaliating against Garza because he contacted her in 2011 asking to modify the loan and loan him money and she refused.

Garza refused the substitution of collateral because the STMHP Trust was already in default on the loan. Garza alleged that Conway was only the manager of STMHP. Conway failed to prove he had any authority to act for the STMHP Trust.

On the same day, Garza filed a demurrer to the Complaint. She argued in favor of the demurrer for all causes of action that Conway did not have the capacity to sue; the facts were not sufficient to constitute a cause of action; the pleading was uncertain; and violated the statute of limitations. Garza also argued that the Complaint should be dismissed pursuant to Code of Civil Procedure section 389, subdivision (b) for Conway's failure to name necessary and indispensable parties.

Garza noted that Conway had sued as an individual and not as the Trustee of the STMHP Trust. Conway had failed to allege how he had standing to sue. Conway alleged his only interest was as a lender to the STMHP Trust secured by an unrecorded AITD, which did not give him standing. Garza also alleged that Conway could not bring this case in retaliation for losing a case in small claims court pertaining to a lien on one of the mobile homes involving parties other than Garza.

Garza submitted a declaration in support of the demurrer to Complaint. She declared that she negotiated with Carlson for the sale of STMHP; she never met with Conway. Conway had requested in November 2011 that Garza substitute collateral. Conway was unable to provide any documentation as to his ownership interest in STMHP. She never received the notice of rescission from Conway.

On October 15, 2012, Conway filed opposition to the motion to strike and demurrer. He opposed all of the grounds raised in the motion to strike and demurrer.

Conway insisted he had an equitable interest in the STMHP Trust and had an option to purchase 50 percent of the trust. Conway claimed that all other parties involved had walked away and he was in sole control of the STMHP Trust. Garza filed a response, again arguing Conway failed to show he had any ownership interest in the STMHP Trust.

The trial court issued a tentative ruling. The trial court noted that Conway had failed to attach a copy of the STMHP Trust documents, the deed of trust for STMHP, or any documentation related to his interest in the mobile home park. It noted that Conway referred to himself as the general manager of STMHP in one of the exhibits. Also, the trial court agreed with the demurrer that Conway had failed to join interested parties, including the STMHP Trust. The trial court determined that Conway failed to set forth sufficient facts to show he had standing to pursue the present action and had failed to comply with Code of Civil Procedure section 389. The trial court noted, “copies of the Contract for the purchase of the subject Property and the recorded Deed of Trust, as well as a copy of the STMHP Trust must be included in any amended pleadings to show the manner in which Plaintiff has an interest, if any, in the subject Property and Trust. Absent such exhibits, the amended pleading will be subject to another general demurrer, and Plaintiff may not be given further opportunity to amend.”

The trial court adopted its tentative ruling at a hearing on November 8, 2012, hearing no further argument. It signed the order dismissing the Complaint with leave to amend on November 13, 2012.



C. FAC AND RULING

Conway filed the 38-page FAC on December 7, 2012. He again filed against Garza and numerous other defendants. Conway alleged that Garza was refusing to honor the substitute collateral agreement. Conway provided a complicated statement regarding his interest in the STMHP Trust. He claimed to hold a lender and equitable interest in STMHP and the STMHP Trust. The STMHP Trust held the title for STMHP. Conway claimed to be the sole beneficiary of the trust.

As best as we can discern from the FAC and exhibits, Conway claimed that Carlson, who was doing business as We Buy Real Estate LLC, signed the purchase agreement with Garza for STMHP. Carlson then immediately assigned his interest to Conway. Conway insisted that Carlson annotated the purchase agreement, that it was transferred to Conway, and Garza was aware of the transfer. Conway then mentioned that his trustee duties were assigned to Tom the Home Buyer LLC, which he insisted was his company that he started in 1999. He also claimed that Drew and Heather were doing business as Desert Gold Properties LLC. They were the sole beneficiaries and cotrustees of the STMHP Trust from 2006 through 2008. However, Carlson was the named Trustee. Conway had not named Drew, Heather and Carlson in the FAC because as trustees they could not be held liable.

Conway mentioned for the first time the Singing Trees Paper Trust and ABC Designs LLC funded the transaction from Conway's IRA for the purchase of STMHP. The Singing Trees Paper Trust wired the money to close the escrow on STMHP. Conway insisted that he had the unrecorded AITD and that he had an option to purchase

50 percent interest in STMHP. Conway indicated that after the market crashed in 2008, Drew and Heather abandoned STMHP and assigned all of their interest as beneficiaries to the STMHP Trust. Conway stated it was effective in January 2009 but executed in August 2009. Conway sought from Garza in 2011 the substitute of collateral to the Rosamond mobile home park owned by him. Conway was seeking rescission of the contract, and his retirement money.

Conway alleged causes of action against Garza for fraud and deceit for the transfer of a mobile home that she did not own, and that she agreed with Conway to substitute collateral but then refused to do so; for defamation; breach of contract; and rescission. Conway stated again that he was assigned the purchase agreement for STMHP but held it as STMPHT Trust with Carlson as Trustee for “legal and retirement reasons.” He was always the third-party beneficiary. Conway entered into a “written and verbal” contract with Garza to allow for substitute collateral and also for the mobile home units. He made a payment into the escrow for \$115,755.75 and made all payments on the loan. Garza breached the contract by not allowing substitute collateral. Garza also did not transfer all the mobile homes free and clear.

Conway attached several exhibits to the FAC. Exhibit A was entitled the “Title Holding Trust Agreement,” which was made on February 22, 2006. It was between the STMHP Trust and Tom the Home Buyer. Tom the Home Buyer and ABC Designs were the beneficiaries. It appeared to be a transfer of STMHP to the STMHP Trust. The beneficiaries that signed the document were Heather, Drew and ABC Designs. Carlson

also signed as Trustee. It was not witnessed or recorded. There was a notary stamp but only for Carlson.

There was also what appeared to be an offer by We Buy Real Estate to Garza to buy STMHP. It was signed on February 6, 2006, by Carlson as agent for We Buy Real Estate as the buyer. It was signed on February 7, 2006, apparently by Garza as seller. On the bottom of the document, handwritten, was "I agree to assign this contract to Tom Conway for \$60,000 cash through escrow." There was an illegible scribbled signature.

Exhibit C was an addendum to a trust agreement. It was between "beneficiaries" and Carlson as the Trustee for the STMHP Trust. There were cotrustees added to the STMHP Trust. Tom the Homebuyer was crossed out and written in were Drew and Heather. The current trustee was listed as We Buy Real Estate, but that was crossed out and Carlson's name was handwritten in.

Exhibit D was a confirmation of a transfer of funds in the amount of \$150,000 to Bank of America or ABC Designs. It also included something called a Paper Trust Agreement. It was in regards to a trust agreement dated March 6, 2006, called the Singing Trees Paper Trust. It stated that ABC Designs, as trustee of the Singing Trees Paper Trust, was to take title to promissory notes, mortgages, land contracts or other financial instruments as described in Exhibit A to the trust agreement. At no time did it mention STMHP. There was a credit from Bank of America to ABC Designs Inc. from Conway's IRA account; it made no mention of STMHP.

Exhibit E was an estimated settled statement for the sale of STMHP from Garza to the STMHP Trust. It referenced that the trust was getting \$115,755.75 from a borrower. Conway does not appear on the document.

Exhibit F was an "Assignment of Beneficial Interest in Land Trust," which purported to be a transfer of the interest that Heather and Drew had as beneficiaries to the STMHP Trust. It was effective January 1, 2009. It was not witnessed or filed. Exhibit H was the deed of trust for STMHP. It listed only Garza and Carlson as the Trustee of the STMHP Trust. Conway was not included.

Exhibit J was entitled "All-Inclusive Purchase Money Deed of Trust with Assignment of Rents." There also was a promissory note. It was dated April 15, 2006, and was between Heather and Drew as Trustors, and Singing Trees Paper Trust/ABC Designs as the beneficiary. The promissory note provided that Heather and Drew pay back ABC Designs \$150,000 in installments. The executed deed of trust transferred STMHP subject to the loan of \$322,500 owned by Garza. It was initialed, but was not witnessed and was never filed. It was signed by Drew and Heather and by Arlette Capel for ABC Designs. It also included an option agreement for Singing Trees Paper Trust/ABC Designs with an option to purchase 50 percent of STMHP. It was signed by Drew and Heather, and Arlette Capel for ABC Designs. Conway was never mentioned.

On January 10, 2013, Conway entered into a joint stipulation with Garza to extend the time to file their demurrer because Garza died on December 24, 2012. Gloria Morgan was appointed the executor of the estate. At a hearing on January 16, 2014, the trial court

agreed to appoint a receiver, at the request of Garza, to maintain the living conditions at STMHP.

Garza filed a demurrer to the FAC on November 20, 2013. It was not made part of the record on appeal.

Conway filed opposition to Garza's demurrer to the FAC. Conway noted that Carlson merely held title to the STMHP Trust for the beneficiaries. Carlson could act only on the direction of the beneficiaries. Conway insisted that Exhibit A to the FAC was evidence that Carlson transferred all trustee duties to Drew and Heather, and they owned a 50 percent interest in STMHP. Conway again insisted that Carlson transferred all his interest to Conway as evidenced by the handwritten note that was executed prior to the STMHP Trust being set up. He insisted that Exhibit C showed ABC Designs was the other 50 percent beneficiary to the STMHP Trust. Conway was apparently the owner or trustee of ABC Designs. As such, he owned a 100 percent interest in STMHP once Drew and Heather transferred their interest to him. Conway had a right to sue as either the real party in interest, under his lender interest, and as an option owner.

Garza filed a reply to Conway's opposition. Garza contested that Conway had shown he had standing to sue. Garza contended that Exhibit A was incomplete and it was between parties not part of the suit. Also, the handwritten assignment of STMHP allegedly written by Carlson was only an assignment at some time in the future. There was no confirmation that the assignment ever occurred. Further, other exhibits offered by Conway all involved different parties, i.e. ABC Designs, and Singing Trees Paper Trust, but Conway never showed that he possessed an interest in these companies. Finally,

Conway failed to join interested parties such as ABC Designs, Desert Gold Properties, Heather, and Drew.

The hearing on Garza's demurrer to the FAC was held on February 11, 2014. The trial court dismissed the FAC with leave to amend.

E. SAC

On March 4, 2014, Conway, now represented by counsel, filed his SAC. It was only filed against Garza (which included the Garza Investments, LP and the Oflodor Corporation). Conway alleged that he was the trustee of the STMHP Trust. He also alleged he owned title to STMHP. Further, Tom the Homebuyer was not named because the sole owner, Conway, had filed a certificate of cancellation. The Singing Trees Paper Trust and ABC Designs, Trustee, funded the "transaction" from "CONWAYS ROTH IRA." Drew and Heather dba Desert Gold Properties were beneficiaries and cotrustees of the STMHP Trust and operators of STMHP from 2006 through 2008. They were not named in the suit because they transferred all of their interest to Conway on January 1, 2009.

The SAC alleged that Garza sold STMHP to Conway, as an individual, for \$425,000. Garza carried a promissory note secured by a first trust deed of \$322,500. Conway claimed that a copy of the Note and the deed of trust were attached as Exhibits A and B. Conway paid \$115,000 for the purchase price and set aside \$20,000 to make improvements to the park from his Roth IRA. In addition to receiving STMHP, Conway also was given 10 vacant trailers.

In March 2009, Conway sought to substitute collateral for the Note and deed of trust but Garza refused. As a result, Conway rescinded the original purchase agreement. As a result of the refusal to substitute collateral, tenants in the mobile homes stopped paying rent. Further, numerous improvements needed to be made to STMHP but Conway could not financially operate the park.

Conway's first cause of action was for breach of contract. Conway believed that the Note and deed of trust were binding contracts. He had fulfilled all of his obligations. Garza breached the contract by refusing to substitute collateral. Conway's second cause of action was for fraud and deceit. Garza knew at the time she sold STMPH to Conway that she would not honor the substitute collateral clause and that she did not own the 10 vacant trailers free and clear. Conway's third cause of action was for negligent misrepresentation based on these same allegations.

Conway attached only two exhibits. Exhibit A was the deed of trust with assignment of rents. It was between the STMHP Trust with Carlson as the Trustee, and Garza. Conway's name did not appear on the trust.

Exhibit B was an "All Inclusive Purchase Money Promissory Note Secured by Long Form All-Inclusive Purchase Money Deed of Trust." It was in the amount of \$150,000. It was payment to ABC Designs, as Trustee. It further stated, "The total principal amount of this Note includes the unpaid principal balance of the promissory note(s) ("Underlying Note(s)") secured by Deed(s) of Trust more particularly described as follows: . . ." It referred to the deed of trust held by Garza for STMHP. It was signed by Heather and Drew, and Arlette Capel as "Trustee."

F. DEMURRER TO SAC

Garza filed a demurrer. Garza contended that Conway failed to comply with the trial court's order issued on November 8, 2012, when it granted the demurrer to the Complaint, advising Conway to provide documents showing that he had an ownership interest in the STMHP Trust or STMHP. The exhibits attached to the SAC did not show any ownership interest by Conway. Exhibit A was the deed of trust between Carlson as trustee for the STMHP Trust and Garza. Exhibit B appeared to “wrap” the Note carried back by Defendant, but it shows no interest in the Property by Plaintiff . . . .” Conway showed no lender interest, nor that he purchased STMHP. Further, Conway failed to name Carlson or the STMHP Trust as parties. Finally, Conway had failed to allege facts sufficient to support a cause of action.

Conway filed opposition. Conway insisted that he performed all of the terms and conditions under the deed of trust by making payments on the Note until Garza refused to honor the substitute collateral agreement. Again, Conway insisted that Garza did not own the 10 mobile homes free and clear, and that she never intended to honor the substitute collateral clause.

Garza filed a reply. She alleged Conway failed to attach the promissory note that applied to the sale of STMHP. Further, Conway failed to comply with the November 8 order.

G. HEARING ON DEMURRER TO SAC AND RULING

The demurrer to the SAC was heard on June 26, 2014. The demurrer was granted without leave to amend. Conway was represented by counsel, but was not present. The



trial court issued its tentative ruling, that Conway had no standing as to the property at issue in the matter. Conway was not on the deed of trust and there was no contract with his name.

Conway's counsel argued that Conway was the owner of the property. He bought it through the "trust" and he was successor in interest to the "trust." Conway's counsel referred to the previous pleadings, which showed he bought STMHP through a "different trust." The trial court stated there was no copy of the "trust." Conway's counsel then asked leave to amend to attach the appropriate documentation. Garza also noted that Exhibit B to the SAC did not even involve the deed of trust for the sale of STMHP. Conway's counsel again asked for leave to amend because he was only recently joined in the case.

The trial court found that Conway had many opportunities to show ownership in STMHP and had failed. It ruled it was going to dismiss the SAC without leave to amend. The judgment was entered on September 16, 2014.

## **DISCUSSION**

### **A. STANDARD OF REVIEW**

"On appeal from an order of dismissal after an order sustaining a demurrer, the standard of review is de novo: we exercise our independent judgment about whether the complaint states a cause of action as a matter of law. [Citation.] First, we give the complaint a reasonable interpretation, reading it as a whole and its parts in their context. Next, we treat the demurrer as admitting all material facts properly pleaded. Then we determine whether the complaint states facts sufficient to constitute a cause of action. [¶]

We do not, however, assume the truth of contentions, deductions, or conclusions of law.” (*Stearn v. County of San Bernardino* (2009) 170 Cal.App.4th 434, 439-440 [Fourth Dist., Div. Two]; see also *Barnett v. Fireman’s Fund Insurance Co.* (2001) 90 Cal.App.4th 500, 504-505.)

In reviewing an order sustaining a demurrer, we also consider exhibits incorporated into a complaint. (*Holland v. Morse Diesel International, Inc.* (2001) 86 Cal.App.4th 1443, 1447 (*Holland*), superseded by statute on another ground as stated in *White v. Criddlebaugh* (2009) 178 Cal.App.4th 506.) “If facts appearing in the exhibits contradict those alleged [in the complaint], the facts in the exhibits take precedence.” (*Ibid.*; see also *Dodd v. Citizens Bank of Costa Mesa* (1990) 222 Cal.App.3d 1624, 1627 [“facts appearing in exhibits attached to the complaint will also be accepted as true and, if contrary to the allegations in the pleading, will be given precedence”].) “False allegations of fact, inconsistent with annexed documentary exhibits [citation] or contrary to facts judicially noticed [citation], may be disregarded.” (*Hoffman v. Smithwoods RV Park, LLC* (2009) 179 Cal.App.4th 390, 400.)

“We are not bound by the trial court’s stated reasons, if any, supporting its ruling; we review the ruling, not its rationale.” (*Mendoza v. Town of Ross* (2005) 128 Cal.App.4th 625, 631.)

## B. STANDING

The trial court dismissed the SAC without leave to amend based on standing. Standing is jurisdictional. (*Californians for Disability Rights v. Mervyn’s, LLC* (2006) 39 Cal.4th 223, 233.) Code of Civil Procedure section 367 provides that, “[e]very action

must be prosecuted in the name of the real party in interest, except as otherwise provided by statute.” “Generally, “the person possessing the right sued upon by reason of the substantive law is the real party in interest.” [Citation.] ‘To have standing, a party must be beneficially interested in the controversy, and have “some special interest to be served or some particular right to be preserved or protected.” [Citation.] This interest must be concrete and actual, and must not be conjectural or hypothetical.’” (*Sipple v. City of Hayward* (2014) 225 Cal.App.4th 349, 358-359.)

Here, Conway’s SAC failed to show that he had any interest in STMHP. Conway alleged he was the Trustee of STMHP, and that he was the owner of STMHP. He alleged that Drew and Heather transferred all of their interest in the STMHP Trust to him in January 2009. For the first time in the SAC, Conway alleged that Garza sold STMHP to him for \$425,000. He attached only two exhibits. They contradicted the factual allegations in the SAC. Exhibit A was the deed of trust with assignment of rents between the STMHP Trust, with Carlson as the Trustee, and Garza. It did not mention Conway in any capacity. Exhibit B was an agreement between ABC Designs and Drew and Heather for a promissory note in the amount of \$150,000. Conway’s name did not appear on the document.

Based on the exhibits attached to the SAC, the factual allegations in the SAC were false. As stated, “If facts appearing in the exhibits contradict those alleged [in the complaint], the facts in the exhibits take precedence.” (*Holland, supra*, 86 Cal.App.4th at p. 1447.) The exhibits attached to the SAC showed that the STMHP Trust owned STMHP, and Carlson was the Trustee, not Conway.

Conway complains that his attorney dropped his causes of action and erroneously attached the two exhibits. He insists that the exhibits do not take precedence over the facts alleged in the SAC because they were irrelevant. Initially, Conway hired counsel to file the SAC for him, and cannot now complain about the contents of the SAC filed by his own counsel. Moreover, the exhibits were not completely irrelevant. Exhibit A was the deed of trust with assignment of rents that showed Garza sold STMHP to the STMHP Trust. It involved only Carlson as the trustee of the STMHP Trust, and Garza. It was relevant as it showed the transfer of the property. Exhibit B showed that ABC Designs had a promissory note with Heather and Drew. It certainly does not prove Conway had an ownership, but we cannot ignore it since it was attached to the SAC.

Conway also appears to contend that the trial court should have considered the Complaint, FAC and SAC together in granting the demurrer to the SAC. He insists, relying on the exhibits from the Complaint and the FAC, that he provided proof of his standing as either an owner, as a secured lender, or real party in interest. Conway cannot rely upon the Complaint and FAC, and the exhibits attached thereto, to support his claim that the demurrer to the SAC should not have been granted.

“It is well established that an amendatory pleading supersedes the original one, which ceases to perform any function as a pleading.” (*Foreman & Clark Corp. v. Fallon* (1971) 3 Cal.3d 875, 884.) “The amended complaint furnishes the sole basis for the cause of action, and the original complaint ceases to have any effect either as a pleading or as a basis for judgment. [Citation.] [¶] Because there is but one complaint in a civil action [citation], the filing of an amended complaint moots a motion directed to a prior

complaint.” (*State Compensation Ins. Fund v. Superior Court* (2010) 184 Cal.App.4th 1124, 1130-1131.) Once Conway filed the SAC, all prior complaints ceased to perform any function as pleadings. The trial court only needed to consider the SAC and the exhibits attached thereto in resolving the case. The SAC and exhibits attached thereto failed to show he had standing to sue Garza.

Conway erroneously relies upon *Holland, supra*, 86 Cal.App.4th 1443, for the proposition that the exhibits to the Complaint and FAC should have been considered because the SAC exhibits contradicted the exhibits to the prior two complaints. Conway misinterprets *Holland*. In *Holland*, the court made the following statement: “If the second amended complaint contradicts or omits facts pleaded in [the plaintiff]’s first two complaints, we will take judicial notice of the earlier complaints and disregard inconsistent allegations, absent an explanation for the inconsistency. [Citation.] We may also take notice of exhibits attached to the complaints. If facts appearing in the exhibits contradict those alleged, the facts in the exhibits take precedence.” (*Id.* at p. 1447.) We do not interpret this to mean that the court is to take notice of the exhibits of the prior complaints in deciding whether to grant or deny a demurrer to an amended complaint. The *Holland* court cited to *Mead v. Sanwa Bank California* (1998) 61 Cal.App.4th 561, which stated, “If the facts appearing in the attached exhibit contradict those expressly pleaded, those in the exhibit are given precedence.” (*Mead*, at pp. 567-568.) It was clear the *Holland* court was referring to the contradictions between the different complaints and it does not hold that an amended complaint can be supported by the exhibits to prior complaints. Moreover, as will be discussed in more detail *post*, even if the trial court had

considered the exhibits to the FAC and Complaint, they both contradicted the SAC, and further, they did not support that Conway had standing.

Based on the foregoing, the SAC failed to establish that Conway had standing to sue Garza, and was properly dismissed without leave to amend.

C. AMENDMENT

Conway argues that he could amend the SAC to include the exhibits that he filed with the Complaint and FAC, and that considered as a whole, he could allege sufficient facts that he had standing to sue Garza.

Initially, the trial court already denied the Complaint and FAC as insufficient to show that Conway showed he had standing to sue. Conway does not state he will provide any additional exhibits to prove his ownership. He provides only that he would add himself as the trustee for the STMHP Trust as a plaintiff. He insists he has provided the necessary documentation to show his ownership.

We extensively laid out the exhibits attached to the Complaint and FAC *ante*. None of the exhibits attached to the Complaint or FAC proved that he had an ownership of STMHP or was the trustee for the STMHP Trust. They additionally did not show he had any right to sue Garza on the purchase and sale agreement that was executed between Garza and Carlson as the trustee of the STMHP Trust. Moreover, most of the exhibits were never filed or recorded, and were signed by companies for which Conway did not show that he owned or had an interest in. He cannot show he can amend to show an ownership interest in STMHP.

D. REMAINING ISSUES

Conway has filed a request for judicial notice with this court. He has failed to show how these documents could be added to an amended complaint to show ownership. He has attached numerous documents, including a fictitious business name statement for the STMHP Trust. However, it does not contain Conway's name, but rather Tom the Home Buyer, which he has not shown belonged to him. Otherwise there are documents regarding transactions between We Buy Real Estate and Garza, and deeds signed by Garza to unknown persons. None show how they are related to STMHP or Conway. The only document bearing Conway's name is an affidavit of death of trustee where Conway himself attests that since Carlson died, that he was the successor trustee to the STMHP Trust. This self-serving document does not show his ownership. He also has not shown why they were not presented to the trial court. We deny Conway's request for judicial notice.

Conway also makes an argument that the trial court erred when it granted Garza's ex parte extension to file the demurrer to the FAC. Garza filed an ex parte and appeared on March 7, 2013, seeking an additional extension to file the demurrer because Garza had passed away. The trial court granted the extension request. Conway relies on "*Younger on California Motions*" to support his claim that he can challenge the granting of the ex parte extension to the FAC from the order granting the demurrer to the SAC. We find no legal authority that he can file an appeal on this ground. We reject the claim.

## DISPOSITION

We affirm the trial court's order granting the demurrer without leave to amend.

Respondent, as the prevailing party, is awarded her costs on appeal.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

MILLER  
J.

We concur:

RAMIREZ  
P. J.

McKINSTER  
J.